

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHNNY L. GREEN,

Plaintiff,

v.

**MICHAEL J. ASTRUE,
COMMISSIONER OF THE SOCIAL
SECURITY ADMINISTRATION,**

Defendant.

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Civil Action No. **3:07-CV-0291-L**

ORDER


This is a social security case. Plaintiff Johnny L. Green filed this action seeking judicial review of a final decision of the Commissioner of Social Security (the “Commissioner”), who denied his application for disability and supplemental security income benefits under Titles II and XVI of the Social Security Act. Pursuant to 28 U.S.C. § 636(b), and an order of the court in implementation thereof, the case was referred to United States Magistrate Judge Paul D. Stickney for review and submission of proposed findings of fact and recommendation for disposition. On July 14, 2008, the magistrate judge filed his Findings, Conclusions and Recommendations (the “Report”), in which he recommended that the court reverse and remand this case to the Commissioner. On July 23, 2008, the Commissioner filed a notice stating that he had determined that no response to the Report would be filed.

The magistrate judge determined that the Appeals Council failed to perform a required six-factor evaluation of a medical statement filed by Plaintiff’s physician. Because the court cannot weigh evidence or make the final disability determination, the magistrate judge recommends that

the court remand the case to the Social Security Administration to consider Dr. Wharton's medical source statement. In light of his recommendation to remand, the magistrate judge did not reach a conclusion as to Plaintiff's other arguments.

After an independent review of the pleadings, file, record, applicable law, the magistrate judge's findings and conclusions, the court determines that the magistrate judge's findings and conclusions are correct, and they are hereby **accepted** by the court. Accordingly, the court **reverses** and **remands** this case to the Commissioner for further proceedings consistent with the Report and this order.

It is so ordered this 30th day of July, 2008.


Sam A. Lindsay
United States District Judge